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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/740,698	12/19/2003	Signe Erickson Varner	SRM0061/US/2	3885				
72870 Kagan Binder, PLLC 221 Main Street North Suite 200 Stillwater, MN 55082	7590 07/01/2011		<table border="1"><tr><td>EXAMINER</td></tr><tr><td>MEHTA, BHISMA</td></tr></table>		EXAMINER	MEHTA, BHISMA		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/740,698

Applicant(s)

VARNER ET AL.

Examiner

BHISMA MEHTA

Art Unit

3767

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 17 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 68-74, 76-119, 122-127, 129 and 132-140
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Bhisma Mehta/
Primary Examiner, Art Unit 3767

Continuation of 11.: Applicant's arguments have been considered but are not deemed persuasive.

As to the arguments in line 13 of page 2 to line 23 of page 3, in Applicant's specification, the device has been disclosed as having a non-linear shape and has also been disclosed as having deviations from a linear path. However, there is no disclosure or support that the distinction between linear or non-linear is through following the "longitudinal axis" of the device. The claims are drawn to a non-linear shaped member and the outer surface of the body member of Weiner does provide a non-linear shape to the body member. The broadest reasonable interpretation consistent with the specification has been applied to the "non-linear shaped body member" to indicate a body member which has a surface that does not follow a straight line such as one that has turn or angles. In lines 21-26 of page 7 of the specification, Applicant discloses that the device can have multiple turns or angles and the body member of Weiner does have multiple turns or angles. Even though Applicant states that "the overall shape of the capsule is linear" with regards to the device of Weiner, the body member of the different embodiments of the device of Weiner are not entirely linear and, thus, the shape of the devices are non-linear. As to the arguments in line 24 of page 3 to line 30 of page 4, Weiner only discloses that injection is preferred as a way of inserting the device into the body. Weiner also discloses the device being inserted without injection where "a slight twirling motion" is preferred during the insertion to facilitate entry. Modifying the device of Weiner to have a coil or zig-zag shape along its entire length would still enable one to insert the device with a slight twirling motion as disclosed by Weiner.

As to the arguments in lines 1-25 of page 5, reducing the cross-sectional diameter would not considerably limit the amount of drug that could be placed in the device of Weiner as modifying the device of Weiner would still result in the device being of the same overall size such that approximately the same amount of drug could be placed in the device. Furthermore, one skilled in the art would recognize that the concentration of the drug in the device could be adjusted to correlate with the size of the device.

As to the arguments in line 26 of page 5 to line 8 of page 6, the primary reference of Weiner teaches a device that is insertable through an incision and the device of Rosenman is indicated as being insertable or capable of being inserted through an incision. Thus, modification of the device of Weiner to have a coil or zig-zag shape would still lead to a device that is insertable through an incision as claimed.

As to the arguments in line 9 of page 6 to line 17 of page 8, Rosenman is not a dissimilar area of medical treatment as both Weiner and Rosenman disclose implantable devices and methods for inserting the implantable devices such that a drug or medicament can be delivered to a specific location in the patient's body.

As to Applicant's arguments in line 18 of page 8 to line 15 of page 9, the problem solved by the Rosenman technology does correlate to the problem solved of the current application as Rosenman discloses implantable devices of different shapes to allow for the delivery of a drug or medicament to a particular location in the patient's body. Furthermore, Weiner also discloses the use of implantable device of different shapes to deliver the drug to the desired location in the patient's body.